

JC05 Rec'd PCT/PTO

16 JUL 2001

#9

THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Marc ZABEAU et al

Application No. : 09/011,307

Group Art Unit:

Filed: August 6, 1996

Examiner:

Atty. Docket No. 31640-134354

For: RESISTANCE AGAINST WILT INDUCING FUNGI

Assistant Commissioner of Patents  
Box PCT Legal Office  
Washington, D.C. 20231

July 16, 2001

**REQUEST TO WITHDRAW HOLDING OF ABANDONMENT**  
**BASED ON FAILURE TO RECEIVE A DECISION BY THE**  
**PCT LEGAL OFFICE**  
**AND RESPONSE TO DECISION**

Sir:

This is a request to withdraw the Notice of Abandonment mailed May 14, 2001 for the above-identified case on the basis that the Decision by the PCT Legal Office at issue, ostensibly dated May 7, 1999, was never received by the Applicant. The basis for the Notice of Abandonment was "Applicant has failed to properly respond to the Decision by the PCT Legal Office which was mailed May 7, 1999." This submission also includes a response to that Decision. Accordingly, the Applicant requests that the holding of abandonment be withdrawn and the application be sent to the Examiner group for examination.

No fee is due. Authorization is hereby provided to charge any other fees made necessary by this submission to our Deposit Account No. 22-0261, and notification of any such charge is requested.

### EVIDENCE OF NON-RECEIPT

Pursuant to MPEP § 711.03(c)(II) (“¶ II”), a request to withdraw a holding of abandonment and remailing of a Notice may be granted, if there is adequate support that the Applicant never received the Notice. To establish non-receipt as required by ¶ II, the Applicant must affirm that the Notice was not received and attest to the fact that a search of the file jacket and docket records indicates that the Notice was not received. In addition, applicant must submit a copy of the docket record demonstrating where the Notice would have been entered.

In compliance with ¶ II, this Petition and the attached docketing records sufficiently demonstrate that the Decision dated May 7, 1999, was not received.

Counsel’s file jacket does not contain a copy of the Notice that would have been placed in the file had it been received.

In addition, the attached PC Master docket report<sup>\*c</sup> shows all correspondence received from the PTO and entered in the docket system from the date the application was filed. This report indicates that on February 9, 1998, the referenced application was filed with the United States Patent and Trademark Office. Moreover, this report shows that no Decision with a mailing date of May 7, 1999 was received for the above-identified case. That is, there is no record of receiving the May 7, 1999 Decision for this application. If such a paper had been received in Venable in 1999, then it would have been opened by the docketing department and the “action taken” date of May 7, 1999 would have been entered under this application’s docket number and would appear in the right hand column. At that time, the “Action due date” of June 7, 1999 would also have been entered under this application’s docket number, and the report

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\* Unrelated confidential text describing has been redacted.

would have been updated to show receipt of the Notice. The absence of such a record, given the docketing procedures in place for opening and recording all correspondences from the PTO, leads to the conclusion that the Notice was lost *en route* to the Applicant, rather than after receipt by Applicant.

Moreover, the lack of receipt of the Decision is evidenced by the Transmittal of Supplemental Declaration and Status Inquiry submitted to the PTO by the applicants on September 11, 2000. In a Reply to Status Inquiry mailed October 6, 2000, applicants first learned of the abandonment of the above-referenced application.

In conclusion, the evidence clearly demonstrates that the Applicant did not receive the Notice dated May 7, 1999. Therefore, the Applicant requests that the holding of abandonment be withdrawn.

### **RESPONSE TO DECISION**

A Supplemental Declaration is attached hereto.

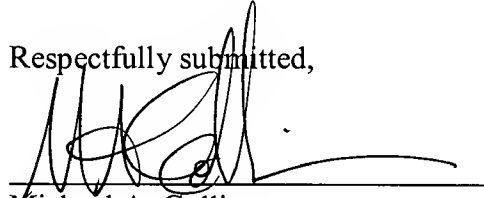
In the Decision May 7, 1999, the PCT Legal Office decided that the required inventor declaration and fee were filed May 1, 1998, and that this was the date of completion of requirements for entry into the national stage under 35 USC 371(c). However, the Legal Office noted a minor inaccuracy in the declaration -- it stated the filing date of the international application as August 7, 1996 rather than the correct date August 6, 1996. The Legal Office required a supplemental declaration to correct the date, and gave a one month period for response, holding further processing in abeyance.

As the Decision was not received when mailed, no response was possible. After Applicant received the Reply to Status Inquiry mailed October 6, 2000, enclosing the Decision, Applicant sought to obtain the signatures of the inventors on a supplemental declaration as

requested by the PCT Legal Office. However, despite repeated and diligent efforts to locate them, not all inventors were available for signature. In May 2001, signatures were obtained for three of the four inventors. Inventor John Groenendijk has not been and is no longer available for signing the declaration. It is submitted that the original declaration signed by all the inventors taken together with the supplemental declaration signed by the three available inventors and submitted herewith satisfies the requirements of 37 CFR 1.67(a).

Applicant therefore requests that a Notification of Acceptance be mailed and the application passed to the examining group for examination on the merits.

Respectfully submitted,



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Enclosure  
DC2#301581

7/13/2001

Patent Information Print

|                  |                            |                  |                  |
|------------------|----------------------------|------------------|------------------|
| Docket No        | 134354                     | Publication #    |                  |
| Country          | United States              | Publication Dt   |                  |
| Case Type        | Regular                    | Assigned         |                  |
| Relation Type    | Original Filing            | Expiration Dt    |                  |
| Filing Type      | National                   | Conv Type        | Paris Convention |
| Filing No        |                            | Tax Base Dt      |                  |
| Responsible Atty | MAG02 - Gollin, Michael A. | Next Tax Dt      |                  |
| General Atty     |                            | Foreign Assoc    |                  |
| Working Atty #1  | MAG02 - Gollin, Michael A. | Working Atty #2  |                  |
| Current Owner    | Keygene N.V.               | For Assoc Ref No |                  |
| Client           | 31640                      | Restriction      | No               |
| Client Ref No    | B2930AB-MR                 | Classified       | No               |
| Status           | Filed                      | Case Number      | 3140-134354      |
| First Filing Dt  | 8/7/1995                   | Recordation Date | 5/1/1998         |
| Sub Stat         | Abandoned                  | Old Docket No    | GUPLA 0008       |
| Sub Stat Dt      | 6/8/1998                   | Old Client       | GUPLA            |
| Parent Country   | Patent Cooperation Treaty  | Approved By      |                  |
| Parent Filing Dt | 8/6/1996                   | Audit Date       |                  |
| Parent No        | PCT/EP96/03480             | Verified         | N                |
| Parent Grant Dt  |                            | Customer         | VBPP             |
| Total Claims     |                            | Create Dt        | 12/31/1999       |
| Ind. Claims      |                            | Update Dt        | 7/13/2001        |
| Application #    | 09/011307                  | Update Tm        | 1130             |
| Application Dt   | 2/9/1998                   | Update User      | MS               |
| Patent No        |                            | Update Type      | A                |
| Grant Dt         |                            |                  |                  |

\*\*Actions\*\*

|              |                       |              |            |
|--------------|-----------------------|--------------|------------|
| Action       | Status Check - 1 Year | Comp Dt      | 10/12/2000 |
| Act Due Date | 8/6/1997              | Resp Code #1 |            |
| Taken Dt     |                       | Resp Code #2 |            |
| DeadLn Dt    |                       |              |            |

|              |                        |              |          |
|--------------|------------------------|--------------|----------|
| Action       | File by Due Date - USA | Comp Dt      | 2/9/1998 |
| Act Due Date | 2/7/1998               | Resp Code #1 |          |
| Taken Dt     |                        | Resp Code #2 |          |
| DeadLn Dt    |                        |              |          |

Act Notes  
Priority Appl. Filing Due - Priority Appl. Filing Due

|              |                   |              |          |
|--------------|-------------------|--------------|----------|
| Action       | No Foreign Filing | Comp Dt      | 2/9/1998 |
| Act Due Date | 2/9/1998          | Resp Code #1 |          |
| Taken Dt     |                   | Resp Code #2 |          |
| DeadLn Dt    |                   |              |          |

|              |                  |              |          |
|--------------|------------------|--------------|----------|
| Action       | Nat'l App. Filed | Comp Dt      | 2/9/1998 |
| Act Due Date | 2/9/1998         | Resp Code #1 |          |
| Taken Dt     |                  | Resp Code #2 |          |
| DeadLn Dt    |                  |              |          |

|              |                          |              |           |
|--------------|--------------------------|--------------|-----------|
| Action       | 6-Month Status Check Due | Comp Dt      | 7/21/1998 |
| Act Due Date | 5/9/1998                 | Resp Code #1 |           |
| Taken Dt     |                          | Resp Code #2 |           |
| DeadLn Dt    |                          |              |           |

Act Notes  
SD: Miss. 371 Req. Notice ~ SD: Miss. 371 Req. Notice

|              |          |              |           |
|--------------|----------|--------------|-----------|
| Action       | IDS Due  | Comp Dt      | 5/11/1998 |
| Act Due Date | 5/9/1998 | Resp Code #1 |           |
| Taken Dt     |          | Resp Code #2 |           |
| DeadLn Dt    |          |              |           |

Act Notes  
3-mo.IDS due ~ 3-mo.IDS due

|              |                              |              |          |
|--------------|------------------------------|--------------|----------|
| Action       | Supplemental Preliminary Ame | Comp Dt      | 7/1/1998 |
| Act Due Date | 7/1/1998                     | Resp Code #1 |          |
| Taken Dt     |                              | Resp Code #2 |          |
| DeadLn Dt    |                              |              |          |

Act Notes  
Preliminary Amendment Filed ~ Preliminary Amendment Filed

|              |           |              |          |
|--------------|-----------|--------------|----------|
| Action       | IDS Filed | Comp Dt      | 7/1/1998 |
| Act Due Date | 7/1/1998  | Resp Code #1 |          |
| Taken Dt     |           | Resp Code #2 |          |
| DeadLn Dt    |           |              |          |

Act Notes  
IDS Filed ~ IDS Filed

|              |                           |              |           |
|--------------|---------------------------|--------------|-----------|
| Action       | Notice of Missing Req Due | Comp Dt      | 8/10/1998 |
| Act Due Date | 8/21/1998                 | Resp Code #1 |           |
| Taken Dt     |                           | Resp Code #2 |           |
| DeadLn Dt    |                           |              |           |

Act Notes  
US: Missing 371 Requirements ~ Missing Req. Due w/0 Ext

|              |                      |              |          |
|--------------|----------------------|--------------|----------|
| Action       | Nat'l Filing Fee Due | Comp Dt      | 2/9/1998 |
| Act Due Date | 2/6/1999             | Resp Code #1 |          |
| Taken Dt     |                      | Resp Code #2 |          |
| DeadLn Dt    |                      |              |          |

|              |                       |              |          |
|--------------|-----------------------|--------------|----------|
| Action       | Notice of Recordation | Comp Dt      | 7/9/1998 |
| Act Due Date | 3/1/1999              | Resp Code #1 |          |
| Taken Dt     |                       | Resp Code #2 |          |
| DeadLn Dt    |                       |              |          |

Act Notes  
SD: Notice of Recordation ~ SD: Notice of Recordation

|              |                 |              |            |
|--------------|-----------------|--------------|------------|
| Action       | Accepted By PTO | Comp Dt      | 10/12/2000 |
| Act Due Date | 10/9/1999       | Resp Code #1 |            |
| Taken Dt     |                 | Resp Code #2 |            |
| DeadLn Dt    |                 |              |            |

Act Notes  
SD:Notification of Acceptance? ~ SD:Notification of Acceptance?

|              |                       |              |           |
|--------------|-----------------------|--------------|-----------|
| Action       | Notice of Abandonment | Comp Dt      | 5/14/2001 |
| Act Due Date | 5/14/2001             | Resp Code #1 |           |
| Taken Dt     |                       | Resp Code #2 |           |
| DeadLn Dt    |                       |              |           |

|              |                       |              |           |
|--------------|-----------------------|--------------|-----------|
| Action       | URGENT 3 DAY REMINDER | Comp Dt      | 5/17/2001 |
| Act Due Date | 5/17/2001             | Resp Code #1 |           |
| Taken Dt     |                       | Resp Code #2 |           |
| DeadLn Dt    |                       |              |           |

Act Notes  
notice of abandonment received/ should be abandoned? (css)  
checking on this.

|              |           |              |  |
|--------------|-----------|--------------|--|
| Action       | Abandon?  | Comp Dt      |  |
| Act Due Date | 7/14/2001 | Resp Code #1 |  |
| Taken Dt     |           | Resp Code #2 |  |
| DeadLn Dt    |           |              |  |

**\*\*Remarks\*\***

Remarks  
Letter ereceived 9/25/2000 \*  
10/10/2000-Reply to Status inquiry received from USPTO stati  
ng that case became abandoned 6/8/1999  
due to failure to to submit supplemental declaration.

**\*\*Inventors\*\***

|          |                   |          |
|----------|-------------------|----------|
| Inv Name | ZABEAU, Marc      | Assigned |
| Inv Name | VOS, Pieter       | Assigned |
| Inv Name | SIMONS, Guus      | Assigned |
| Inv Name | GROENENDIJK, John | Assigned |

**\*\*Title\*\***

Title  
RESISTANCE AGAINST WILT INDUCING FUNGI

**\*\*Text\*\***

Txt Type                      Priority Number & Country

Text  
95401849.5 GB 07/08/1995

Txt Type                      Old Reel & Frame Number

Text  
9158-648

Txt Type

Text

Txt Type

Text